IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	)	
	)	
JOSEPH K. ROBBINS,	)	**Supreme Court #SC84875**
	)	
Respondent.	)	

INFORMANT'S REPLY BRIEF

OFFICE OF
CHIEF DISCIPLINARY COUNSEL

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ATTORNEYS FOR INFORMANT

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Informant stands behind its Statement of Facts.

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POINT RELIED ON

II.

THE SUPREME COURT SHOULD SUSPEND RESPONDENT'S LICENSE WITH NO LEAVE TO APPLY FOR REINSTATEMENT FOR A MINIMUM OF SIX MONTHS BECAUSE RESPONDENT KNOWINGLY VIOLATED DUTIES TO HIS CLIENTS IN THAT HE CONCEALED FROM THE CLIENTS THAT THE STATUTE OF LIMITATIONS BARRED THEIR CAUSES OF ACTION AND, IN ONE CASE, THAT HE HAD DISMISSED THE CLIENT'S CASE

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ARGUMENT

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE HE DEPRIVED TWO CLIENTS OF THEIR CAUSES OF ACTION IN THAT HE ALLOWED THE STATUTES OF LIMITATION TO RUN ON THE CASES THEY ENTRUSTED TO HIM AND THEN FAILED TO ACKNOWLEDGE TO THE CLIENTS WHAT HE HAD DONE

Informant will reply to Respondent's Points I and II under Point I of its Reply Brief.

The gist of Respondent's argument appears to be that Informant did not meet its burden of proof, which in a disciplinary case is a preponderance of evidence, in establishing violations of the charged rules. Respondent acknowledged in his testimony that he neglected Mr. Viermann and Ms. McFadden's matters, that he "screwed up," that he should not have done what he did, should have represented them more zealously and done what he was supposed to do. He acknowledged, albeit very reluctantly, that his conduct violated the Rules of Professional Conduct. See **T**. 122.

A preponderance of evidence is the "greater weight of the credible evidence, that is, evidence tending to show the facts upon which a party's case or affirmative defense depends, which is more convincing to the triers of the fact as worthy of belief than that which is offered in opposition thereto." *Chamberlain v. Missouri-Arkansas Coachlines,*

Inc., 173 S.W.2d 57, 62 (Mo. 1943). The Disciplinary Hearing Panel, which had the advantage of observing Respondent's demeanor as he testified, was convinced by the evidence that Respondent did violate Rules 4-1.1 (competency), 4-1.3 (diligence), 4-1.4 (communication), and 4-8.1(b) (knowing failure to respond to a lawful demand for information from disciplinary authorities). The two complainants (out of the six whose complaints are enumerated in the information) who appeared for the disciplinary hearing testified over and over that they were rarely, if ever, able to communicate with Respondent on the numerous occasions that they called his office. Respondent has acknowledged that he neglected Mr. Viermann's and Ms. McFadden's files, neglect to the point that the statute of limitation extinguished their causes of action. Such conduct is a classic example of lack of diligence and competency, violations of 4-1.1 and 4-1.3. The foregoing evidence easily satisfies the "preponderance" burden of proof on the 4-1.1, 4-1.3, and 4-1.4 violations. Respondent concedes a lack of evidence to support the 4-1.16(d) violation.

The evidence of the 4-8.1(b) violation was that Mr. Pratzel wrote a letter to Respondent at his then current mailing address requesting information about the McFadden complaint and Respondent made no response to the letter. Respondent could not recollect ever seeing the letter, but did not deny it was mailed or received at his office. Respondent was admonished in 1995 for not responding to disciplinary authorities. The Panel believed, based on the greater weight of this credible evidence, that Respondent violated Rule 4-8.1(b).

ARGUMENT

II.

THE SUPREME COURT SHOULD SUSPEND RESPONDENT'S LICENSE WITH NO LEAVE TO APPLY FOR REINSTATEMENT FOR A MINIMUM OF SIX MONTHS BECAUSE RESPONDENT KNOWINGLY VIOLATED DUTIES TO HIS CLIENTS IN THAT HE CONCEALED FROM THE CLIENTS THAT THE STATUTE OF LIMITATIONS BARRED THEIR CAUSES OF ACTION AND, IN ONE CASE, THAT HE HAD DISMISSED THE CLIENT'S CASE

Informant will reply to Respondent's Points III, IV, and V under this Point II.

The gravamen of Respondent's argument for some level of sanction below suspension rests on his assertion that the evidence does not support the Panel's conclusion that Respondent acted knowingly and that his conduct involved dishonesty, deceit, fraud, misrepresentation, and was prejudicial to the administration of justice (4-8.4(c)(d)).

The evidence supporting the Panel's conclusion that Respondent acted more than just negligently includes the following: In June of 1994 Respondent agreed to take client McFadden's prescription drug case. He filed the case three days after the statute of limitations had run on it. Faced with a motion to dismiss the petition due to the running of the statute of limitations in March of 1997, Respondent dismissed the case without

prejudice. Respondent acknowledged he would have been "very concerned" about the file. Yet some three plus years later, when Ms. McFadden called to ask about her case, Respondent professed to have forgotten all about the file and, despite several phone conversations in early 2001 with Ms. McFadden about her case, never told her the statute had run or that he had dismissed her petition.

Respondent agreed to take on client Viermann's medical malpractice wrongful death case in June 1995 and withheld $1,000 from the settlement of a different matter to cover anticipated expenses in the case. Twenty-one letters were sent out seeking decedent's medical records. Respondent concurrently pursued and in June of 1999 settled Mr. Viermann's workers' compensation case. When Mr. Viermann demanded the return of the wrongful death file a few months after the workers' compensation case settled, Respondent did the arithmetic necessary to figure out how much of the $1,000 to refund to Mr. Viermann and returned the file to him. Yet, according to Respondent, he remembers nothing about the file, including whether there was a statute of limitations problem in it, and said nothing to Mr. Viermann about the statute of limitations. Neither Mr. Viermann nor Ms. McFadden learned from Respondent that the statute of limitations had run on their cases; they had to find it out from other sources.

From these and other facts, most particularly Respondent's failure to come clean with his clients, the Panel concluded Respondent had violated Rules 4-8.4(c)(d). Mental state is rarely openly acknowledged. By its nature, it must necessarily be found from the facts. Here, Respondent had previously been admonished for violating the rules on competence, communication, and failure to provide information to disciplinary

authorities. Respondent was an experienced trial attorney, as his prestigious references attest. It defies credulity, and the Panel did not believe, that Respondent simply forgot all about the files that an upset Mr. Viermann and Ms. McFadden were repeatedly calling him about.

Respondent relies heavily in his brief on *In re Kramer*, SC82516, which is a disciplinary case that did not result in an opinion by the Court. Respondent relies on *Kramer* for the proposition that suspension would not be appropriate here inasmuch as Ms. Kramer was not suspended for more egregious behavior. The Court's rationale in *Kramer* is not available to Respondent or Informant since there was no opinion issued, but Informant is aware that there was medical evidence in Ms. Kramer's case attributing her propensity to lie to her clients to a severe mental disability. Nothing like that evidence is present in this case. With respect to the eight other unpublished disciplinary cases cited on pages 60-62 of Respondent's brief, suffice it to say that the precedential value of an order listing Rule violations, with no accompanying rationale or review of aggravating and mitigating factors, is not persuasive authority.

Finally, Respondent requests under his fifth point relied on that if he is suspended, the suspension be stayed during a period of probation pursuant to new Rule 5.225. The Office of Chief Disciplinary Counsel would not oppose a six-month suspension to be stayed during a twelve month period of probation with conditions to be set by the Office of Chief Disciplinary Counsel.

CONCLUSION

Respondent Robbins has committed professional misconduct by violating Rules 4-1.1, 4-1.3, 4-1.4, 4-8.1(b), and 4-8.4(c)(d). Respondent's prior admonitions for violating three of these very same rules, coupled with his knowing concealment of his misconduct from his clients, require his suspension from the practice of law with no leave to apply for reinstatement for a minimum of six months.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of January, 2003, two copies of Informant's Brief have been sent via First Class mail to:

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CERTIFICATION: SPECIAL RULE NO. 1(c)

I certify to the best of my knowledge, information and belief, that this brief:

1. Includes the information required by Rule 55.03;

2. Complies with the limitations contained in Special Rule No. 1(b);

3. Contains 1,711 words, according to Microsoft Word 97, which is the word processing system used to prepare this brief; and

4. That Norton Anti-Virus software was used to scan the disk for viruses and that it is virus free.

_____
Sharon K. Weedin